

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Date:-31-1-1996

SPECIAL CIVIL APPLICATION NO.5239 OF 1987.

For Approval and Signature

THE HON'BLE MR. JUSTICE N.N. MATHUR.

1. Whether Reporters of Local Papers may be allowed to see the judgment ? No.
2. To be referred to the Reporter or not ?
No.
3. Whether their Lordships wish to see the fair copy of judgment? No.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder? No.
5. Whether it is to be circulated to the Civil Judge? No.

Mr. J.R. Navanati, Advocate for the petitioners.
Miss Harsha Devani, A.G.P., for the respondents.

CORAM:-N.N. MATHUR, J.

Date:-31-1-1996

ORAL JUDGMENT:

The say of the petitioners in this Special Civil Application is that they belong to scheduled castes and scheduled tribes. The respondent no.4 Chiloda Gram Panchayat with a view to help weaker sections of the society by the resolution no.4 to divest the land of block No.474 admeasuring 3 Acres and 24 Gunthas and Block No.475 admeasuring 3 Acres and 13 Gunthas vested in the respondent no.1 so that the houses can be built for the petitioners and other weaker sections of the society. The further say of the petitioners is that the lands were allotted to 71 persons for building the houses by the respondent no.4 and the Taluka Development Officer of

Gandhinagar Taluka. The petitioners say that there are other 41 claimants out of which the petitioners are also the claimants and they have made applications for allotment of land for building houses. It is the further say of the petitioners that in the said land 47 cabins have been built by unauthorised occupants and that the said unauthorised occupants belong to higher class of the society and after building the shops/cabins some of them have sold the cabins and obtained sale price of Rs.80000/- to Rs.100000/- and they have rented the cabins from which they are earning rent to the tune of Rs.500/to Rs.1000/-. It is also the further say further of the petitioners that the unauthorised occupants do not belong to Chiloda village and they have got their houses and business at Gandhinagar and other parts of Gandhinagar District adjoining village Chiloda. The grievance of the petitioners is that the respondent no.1 instead of permitting the petitioners to build houses has decided to regularise the aforesaid unauthorised occupants by 48 persons.

2. This Court by the order dated 3-12-1988 by way of interim relief restrained the respondents from regularising the alleged encroachment. Considering the facts of the case, this Court further directed that unless alternative arrangement is made to rehabilitate the scheduled Tribe people, this land can not be permitted to be regularised in favour of the persons who have unlawfully encroached upon the same.

3. It appears from the reply filed by the Sarpanch that the Gram Panchayat has also filed Special Civil Application before this Court against the State of Gujarat and District Development Officer challenging the order of the State Government whereby the Gram Panchayat has been restrained from imposing and recovering penalty u/s 319 of the Gujarat Panchayats Act, 1961. All the unauthorised occupants of the land - encroachers in the said application on 21-10-1988 made a statement before this Court that the State Government has cancelled the direction restraining the Gram Panchayat for levying penalty rent from the unauthorised occupants.

4. Considering the facts of the case and the fact that the said land was allotted to the petitioners who belong to weaker sections of the society and instead of giving them possession, the same is sought to be regularised in favour of the persons who are in unauthorised occupation. It is appropriate to restrain the State of Gujarat from regularising the said possession in favour of those persons till suitable

alternative land is given to the petitioners. If the alternative land has already been given to the petitioners, it will be open for the State of Gujarat to approach this Court for appropriate directions for regularisation of the land.

5. In view of the aforesaid, this Special Civil Application is allowed to the aforesaid extent. Rule is made absolute to the above extent.

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